



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

TRG
Docket No: 889-99
1 November 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) Case Summary
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Navy filed an application with this Board requesting that he be retired under the provisions of the Temporary Early Retirement Authority (TERA) vice being discharged on 29 October 1998.

2. The Board, consisting of Mr. Pfeiffer, Mr. Zsalman and Mr. McCulloch, reviewed Petitioner's allegations of error and injustice on 24 October 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Petitioner's application was filed in a timely manner.

c. Petitioner reenlisted in the Navy for five years on 20 January 1995. At that time he met the applicable body fat requirements. The performance evaluations and physical readiness forms show that beginning on 8 April 1996 and continuing through 15 November 1997, he failed the body fat portion of the Physical Readiness Test (PRT). There are no further performance evaluations in the record. These evaluations show that except for low marks in personal appearance/military bearing, he performed in an excellent manner.

d. On 27 May 1998 Petitioner's body fat was 26% and he was counseled and warned that continuing failure to meet the standards would lead to processing for an administrative

discharge. The discharge processing package is not in the record. However, the record shows that on 29 October 1998 he was honorably discharged due to weight control failure and was paid separation pay of \$22,543.17. At the time of discharge he had completed 17 years, 11 months and 27 days of active service.

e. Petitioner states that he applied for TERA but was turned down because his detailer had priority billets to fill. He also states that during the last nine months of his service he was on limited duty because of bad knees and could not exercise.

f. The Board is aware that Petitioner's separation pay will be recouped if he is retired under TERA.

g. The Board is also aware that the Uniform Retirement Date Act 5 U.S.C 8301 requires that the effective date of any retirement be the first day of the month.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. The Board notes Petitioner had many years of excellent service and the only problem during the last few years of service was his weight. Further, at the time of his discharge, he was only about two years short of qualifying for transfer to the Fleet Reserve with 20 years of service. Given the circumstances, the Board concludes that retirement under the provisions of TERA is now warranted. Therefore, the record should be corrected to show that he was not discharged on 29 October 1998 but served on active duty for one more day and then transferred to the Fleet Reserve effective on 1 November 1998.

The Board further concludes that this Report of Proceedings should be filed in Petitioner's naval record so that all future reviewers will understand his status in the Fleet Reserve.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was not discharged on 29 October 1998 but served on active duty for an additional period of one day and he then transferred to the Fleet Reserve effective on 1 November 1998.

b. That this Report of Proceedings be filed in Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and


complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director